

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

T-MOBILE USA, INC.,

Respondent,

- and -

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

Case Nos.: 14-CA-155249

14-CA-158446

14-CA-162644

14-CA-166164

RESPONDENT'S RESPONSE TO BOARD'S ORDER TO SHOW CAUSE

Respondent T-MOBILE USA, INC. (“T-Mobile” or “Company”) responds to the National Labor Relations Board’s (“Board”) Order to Show Cause relating to paragraphs 6, 7(a), and 7(c) of the Consolidated Complaint. Specifically, the Board seeks the position of the parties on whether these allegations should be remanded for consideration of whether the employee’s conduct fits within the limited exception identified in *Caesar’s Entertainment*, 368 NLRB No. 143 (2019), Slip op., pp. 7-8. Respondent asserts there is no reason to remand this case because the record contains detailed information establishing that T-Mobile’s employees working at its Wichita, Kansas Call Center have adequate and effective means of communication with each other without the use of Company email. Specifically, the record in this case contains evidence that the three avenues identified as “adequate means of communication” in *Caesar’s* are present here: the fact employees work at the same location and have the opportunity to orally solicit each other on nonwork time, the ability to distribute literature in nonwork areas of the

employer's facility on nonwork time, and the presence and use of personal cell phones for texting, calling, and using social media. *Id.*

- *Onsite presence of employees for oral solicitation.* In this case, all employees work at the same location where in the course of a work day they take breaks and meal periods and can solicit each other about the union or anything else for that matter. There are 600 Customer Service Representatives onsite at the Wichita Call Center, staffing the operation from 6:00 a.m. to Midnight. (Tr. 375-376). There is more than ample time for face to face communication. Employee Befort testified she would solicit employees “by word of mouth” among other avenues of communication. (Tr. 45). Employee Alyssa Jones testified about congregating with other employees at the smoking area outside the all center to discuss the union and plan union activities. (Tr. 112-113)
- *Ability to distribute union literature in nonwork areas on nonwork time.* The record this case shows that pro-union employees regularly distribute literature in nonwork areas during nonwork times: Employee Befort testified: “I also did quite a bit of what we call leafletting on my time off work were we would stand at the entrances of the call center to hand out flyers and just work toward educating the other people who worked there” about the union. (Tr. 44). Employee Abigail Parrish often distributed flyers on company premises and sometimes brought treats such as donuts for her fellow employees. (Tr. 187).
- *Access to smartphones, social media and personal email accounts.* The record shows the consistent use of personal cell phones at the all center. Employees testified they used personal technology to advocate for the union while at work. Befort: “To communicate with my co-workers I would use, word-of-mouth, social media, leafletting of course,

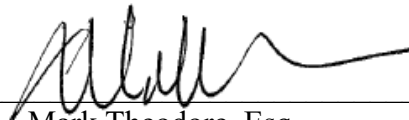
texting, calling.” (Tr. 45) Befort also acknowledged that she “didn’t hide” her support and often wore union t-shirts and pins to work. (Tr. 74); Employee Alyssa Jones acknowledged she used a personal email address. (Tr. 107); Jones also testified, “Everyone is on their phone using it for social media, texting, Snapchatting, all types of things.” (Tr. 144).

T-Mobile asserts the foregoing examples from the record in this case, as well as other evidence, demonstrate there is no need to remand this case to the Administrative Law Judge and that Paragraphs 6, 7(a), and 7(c) should be dismissed as there is more than adequate means for employees to communicate apart from the T-Mobile e-mail system.

Dated: April 15, 2020

PROSKAUER ROSE LLP

By: _____

A handwritten signature in black ink, appearing to read 'Mark Theodore', written over a horizontal line.

Mark Theodore, Esq.
Attorney for Respondent,
T-MOBILE USA, INC.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I declare that: I am employed in the county of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is 2029 Century Park East, Suite 2400, Los Angeles, California 90067-3010.

On April 15, 2020, I served the following document, described as:

RESPONDENT'S RESPONSE TO BOARD'S ORDER TO SHOW CAUSE

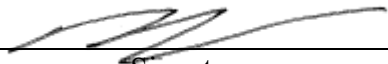
By placing a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

- ☒ (By Electronic Filing) By transmitting a true and correct copy thereof via electronic filing through the National Labor Relations Board's website.
- ☒ (By Email) By transmitting a true and correct copy thereof via electronic transmission to the email address(es) listed on the attached Service List.
- ☐ (By Fax) By transmitting a true and correct copy thereof via facsimile transmission to the addressee.
- ☐ (By Mail) I am "readily familiar" with the Firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ By causing such envelope to be delivered by the office of the addressee by OVERNIGHT DELIVERY via Federal Express or by other similar overnight delivery service.
- ☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 15, 2020 at Los Angeles, California.

Robert Linton
Type or Print Name


Signature

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